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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/616,538

07/09/2003

Tatsuya Masuki

59549 (71360)

1953

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7590

04/24/2006

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/616,538	<b>Applicant(s)</b> MASUKI ET AL.	
	<b>Examiner</b> Walter B. Aughenbaugh	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendment made in claim 1 in the Amendment filed February 10, 2006 (Amdt. B) has been received and considered by Examiner.
2. The amendment made in the abstract in Amdt. B has been received and considered by Examiner.

### ***WITHDRAWN OBJECTIONS***

3. The objection to the abstract that was repeated in paragraph 7 of the previous Office Action mailed November 2, 2005 has been withdrawn due to Applicant's amendment in the abstract in Amdt. B.

### ***REPEATED REJECTIONS***

4. The 35 U.S.C. 112, first paragraph rejection of claims 1, 4 and 5 that was repeated in paragraph 8 of the previous Office Action mailed November 2, 2005 has been repeated for the reasons previously made of record.
5. The 35 U.S.C. 103 rejection of claims 1-7 and 10 made of record in paragraph 9 of the previous Office Action mailed November 2, 2005 has been repeated for the reasons previously made of record, and for the following reason that addresses the amendment made in claim 1 in Amdt. B: Bird teaches that the recessed flat portion (bottom wall 116) is formed by injection molding since Bird teaches that the web 200 of thermoplastic polymer is supplied as a preformed sheet by continuous injection molding to a mold or die 204 that thermoforms the web (col. 12, lines 46-56). Since the pockets 112 are formed from web 200 (col. 12, lines 44-56), and since bottom wall 116 is the bottom wall of each pocket 112 (col. 6, line 26), the recessed flat portion

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(bottom wall 116) of Bird is formed by injection molding. Consequently, the container taught by Bird, Satake et al. and Sylvester et al. as proposed in the 35 U.S.C. 103 rejection of claims 1-7 and 10 made of record in paragraph 9 of the previous Office Action mailed November 2, 2005 comprises a recessed flat portion that is formed by injection molding.

***Response to Arguments***

6. Applicant's arguments regarding the 35 U.S.C. 112, first paragraph rejection of claims 1, 4 and 5 presented on pages 5-6 of Amdt. B have been fully considered but are not persuasive.

Applicant has not addressed the issues raised in this rejection. The reason for the rejection is that the specification does not clearly distinguish between the three claimed properties. Office Action mailed March 23, 2005, pages 3-4; Office Action mailed November 2, 2005, pages 3 and 9. Applicant alleges on pages 5-6 of Amdt. B that the method of measuring each of the three properties is described in the specification, but Applicant has not shown that (or even explicitly argued) that the three properties are indeed distinguishable properties (which is the reason that Applicant has not addressed the issues raised in the rejection). Furthermore, it is unclear what portion of the subject matter of the discussion in the first full paragraph of page 6 of Amdt. B is actually supported in the specification. Properties having the names "surface waviness" and "sink mark depth" could not be located in the attached copy of JIS 0601-2001, and Applicant has not explained how/where these properties are disclosed in JIS 0601-2001. Applicant's suggestion that "surface waviness" and "sink mark depth" have a "plain and ordinary meaning in the art" is not supported. Applicant has conspicuously not included a JIS standard for Applicant's "flatness" property. Applicant has not shown how "flatness" is distinguished from "surface waviness".

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7. Applicant's arguments regarding the 35 U.S.C. 103 rejection of claims 1-7 and 10 presented on pages 6-8 of Amdt. B have been fully considered but are not persuasive.

Bird teaches that the recessed flat portion (bottom wall 116) is formed by injection molding since Bird teaches that the web 200 of thermoplastic polymer is supplied as a preformed sheet by continuous injection molding to a mold or die 204 that thermoforms the web (col. 12, lines 46-56). Since the pockets 112 are formed from web 200 (col. 12, lines 44-56), and since bottom wall 116 is the bottom wall of each pocket 112 (col. 6, line 26), the recessed flat portion (bottom wall 116) of Bird is formed by injection molding. Consequently, the container taught by Bird, Satake et al. and Sylvester et al. as proposed in the 35 U.S.C. 103 rejection of claims 1-7 and 10 made of record in paragraph 9 of the previous Office Action mailed November 2, 2005 comprises a recessed flat portion that is formed by injection molding.

As acknowledged by Applicant on page 7 of Amdt. B, "the pockets [of Bird] are thermoformed in a pre-formed sheet or film, which may be formed by injection molding"; therefore, the recessed flat portion (bottom wall 116) of Bird is formed by injection molding since the bottom wall 116 is the bottom wall of each pocket 112 (col. 6, line 26).

Responsive to the paragraph bridging pages 7 and 8 of Amdt. B, the container of Bird is produced by injection molding since, as Applicant's acknowledge, "an intermediate product, [the] sheet of film, may be produced by continuous injection molding and then subsequently a container [is] thermoformed from the blank sheet". Applicant does not claim that the container "is [] injection molded".

An argument that has not been addressed above in this Office Action cannot be gleaned from the first full paragraph of page 8 of Amdt. B through the rest of the page: the second full paragraph of page 8 of Amdt. B seems to be incomplete.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

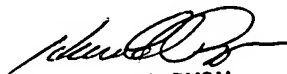
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh  
04/18/06

WBA

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

4/20/06